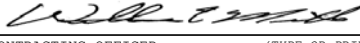


SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER W90XW8-2329-2001		PAGE 1 OF 52	
2. CONTRACT NO. DAMT01-03-D-0169		3. AWARD/EFFECTIVE DATE 23-May-2003		4. ORDER NUMBER		5. SOLICITATION NUMBER	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME			b. TELEPHONE NUMBER (No Collect Calls)		6. SOLICITATION ISSUE DATE
9. ISSUED BY MILITARY TRAFFIC MANAGEMENT COMMAND MTAQ-G GLOBAL INTERMODAL DIST. DIV., ROOM ALEXANDRIA VA 22332-5000		CODE MT01B11	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input checked="" type="checkbox"/> SET ASIDE: 100% FOR <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8(A) SIC: 4412 SIZE STANDARD: 500			11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO SEE SCHEDULE			16. ADMINISTERED BY MILITARY TRAFFIC MANAGEMENT COMMAND BILL MILLS 703-428-3080 MILLSW@MTMC.ARMY.MIL VA				
17a. CONTRACTOR/ OFFEROR VAN OMMEREN SHIPPING (USA) LLC MR MIKE CHAPELL 46 SOUTHFIELD AVE STAMFORD CT 06902 TEL. (203) 705-4534			CODE 0FXR7	18a. PAYMENT WILL BE MADE BY DBOF DFAS-OM/FPB-MTMC PO BOX 7020 BELLEVUE NE 68005-1920			CODE 389900
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER			18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
SEE SCHEDULE							
25. ACCOUNTING AND APPROPRIATION DATA See Schedule						26. TOTAL AWARD AMOUNT \$3,838,345.00	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1. 52.212-4. FAR 52.212-3. 52.212-5 ARE ATTACHED.						ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED.						ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED	
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 2 COPIES <input checked="" type="checkbox"/> TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: REFERENCE <input type="checkbox"/> OFFER DATED . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) 		31c. DATE SIGNED 17-Jun-2003	
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) WILLIAM MILLS / CONTRACTING OFFICER TEL: 703-428-3080 EMAIL: millsw@mtmc.army.mil			
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED				33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE				32c. DATE		35. AMOUNT VERIFIED CORRECT FOR	
36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL				37. CHECK NUMBER			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		40. PAID BY			
				42a. RECEIVED BY (Print)			
				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449 (10-95)
Prescribed by GSA
FAR (48 CFR) 53.212

Section SF 1449 - CONTINUATION SHEET

ATTACHMENTS

CONTRACT ATTACHMENTS

Attachment (1) - Definitions/Abbreviations

Attachment (2) - Clearance Order/Shipping Order (MTMC Form 4612-1)

Attachment (3) - Ocean Carrier Payment Procedures

Attachment (4) - Past Performance Reference Information Sheet

Attachment (5) - Azores Performance Requirements Summary (PRS)

Attachment (6) - Cargo Tonnage Projection

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001		1	Dollars, U.S.	\$3,838,345.00	\$3,838,345.00
	Base Year FFP Azores breakbulk and intermodal container service between points and port(s) in CONUS and the commercial terminal in Port of Praia, Azores. One year base period of performance - 12 July 03 thru 11 July 04				
NET AMT					\$3,838,345.00
ACRN AA Funded Amount					\$3,838,345.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0002		1	Dollars, U.S.	\$3,876,357.00	\$3,876,357.00
OPTION	First Option Year FFP Azores breakbulk and intermodal container service between points and port(s) in CONUS and the commercial terminal in Port of Praia, Azores. Period of performance - 12 July 04 thru 11 July 05				
NET AMT					\$3,876,357.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0003		1	Dollars, U.S.	\$3,915,251.00	\$3,915,251.00
OPTION	Second Option Year FFP Azores breakbulk and intermodal container service between points and port(s) in CONUS and the commercial terminal in Port of Praia, Azores. Period of performance - 12 July 05 thru 11 July 06				
NET AMT					\$3,915,251.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0004		1	Dollars, U.S.	\$3,954,614.00	\$3,954,614.00
OPTION	Third Option Year FFP Azores breakbulk and intermodal container service between points and port(s) in CONUS and the commercial terminal in Port of Praia, Azores. Period of performance - 12 July 06 thru 11 July 07				
NET AMT					\$3,954,614.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0005		1	Dollars, U.S.	\$3,993,475.00	\$3,993,475.00
OPTION	Fourth Option Year FFP Azores breakbulk and intermodal container service between points and port(s) in CONUS and the commercial terminal in Port of Praia, Azores. Period of performance - 12 July 07 thru 11 July 08				
NET AMT					\$3,993,475.00
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0006	BASE YEAR FFP BASE YEAR PURCHASE REQUEST NUMBER: W90XW8-2329-2001	1	Years		

NET AMT	\$0.00
---------	--------

Funded Amount	\$0.00
---------------	--------

FOB: Air Carriers Terminal, P of E

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	Destination	Government	Destination	Government
0002	Destination	Government	Destination	Government
0003	Destination	Government	Destination	Government
0004	Destination	Government	Destination	Government
0005	Destination	Government	Destination	Government
0006	N/A	N/A	N/A	N/A

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	POP 12-JUL-2003 TO 11-JUL-2004	N/A	N/A FOB: Destination	
0002	POP 12-JUL-2004 TO 11-JUL-2005	N/A	N/A FOB: Destination	
0003	POP 12-JUL-2005 TO 11-JUL-2006	N/A	N/A FOB: Destination	
0004	POP 12-JUL-2006 TO 11-JUL-2007	N/A	N/A FOB: Destination	

0005 POP 12-JUL-2007 TO N/A N/A
12-JUL-2008 FOB: Destination

ACCOUNTING AND APPROPRIATION DATA

AA: AA: 9700XXXXXXXX 4930 FD30 35 7740 TTTS0000000 4411 22N9 W90XW8-23292001 389900 CN:3055
AMOUNT: \$3,838,345.00

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1.0 INTRODUCTION/BACKGROUND

1.1 Streamlined, Performance-Based Processes

The Military Traffic Management Command has streamlined the processes involved in soliciting, evaluating, awarding and administering contracts for Intermodal Sealift. The process maintains a competitive environment, while considering the needs of both customers and suppliers, focuses on reducing costs and implementing performance- based contracts.

2.0 SCOPE

2.1 Transportation Services

2.1.1 Basic Service

The Contractor, a vessel operating ocean Carrier, shall provide transportation of lawful cargo by U.S. flag ships between points in the Continental United States of America (CONUS) as specified in CARE-SM II System and the commercial terminal in Port of Praia, Azores. The Carrier shall maintain regularly scheduled liner term service on this route throughout the period of the Contract via a self-sustaining or self-geared vessel(s).

The services being procured by this contract provide the primary logistical support for the American Forces stationed in the Azores and the sole means of surface transportation between the U.S. and the Azores. The Carrier will transport over 90% of all supplies used at the base, including food, other necessities, and amenities providing quality of life. Reliability of service in all weather conditions is paramount. Sea State 4 or higher is frequent on the annual schedule. Maintenance of the schedule has allowed the Air Base to move to a just-in-time delivery system, resulting in significant savings, including being able to eliminate the requirement to maintain redundant/spare equipment. Minimum exposure to intransit damages will result in further reducing or eliminating the need for untimely replacement from stateside sources with resulting loss of capability and unacceptable time delays in restoring that capability.

The Government seeks a teamwork relationship with the Carrier that will minimize the government's overall exposure to costs and risk associated with this transport, including both Carrier and non-carrier related costs and time element problems. Reliability of the schedule is paramount in shortening the supply chain and in minimizing exposure to re-acquisition costs.

The Carrier shall provide both breakbulk and intermodal container service, including terminal handling, all stevedoring, loading and discharging in CONUS. At Port of Praia the designated U.S. Government contractor shall provide all port handling and stevedoring unless the Government directs the Carrier to implement such services as specified at Section 2. The minimum acceptable frequency of service shall be a vessel call at Azores at intervals not to exceed twenty-five (25) days between deliveries. Actual cargo transit time shall not exceed eleven (11) days from the last loading port in CONUS to Port of Praia and eleven (11) days from Port of Praia to the first discharge port in CONUS. For inbound cargo, inland cargo delivery transit after port clearance (commencement of delivery) shall not exceed one day for every 300 miles of the shortest road distance from the port of discharge. For outbound cargo, if inland cargo delivery is required by the Government, transit after commencement of delivery shall not exceed three (3) days by the shortest road distance from the port of discharge. The Carrier shall carry any and all cargoes offered by the Government up to the capacity of the vessels offered for use in this trade, with the exception of those limitations of the Carrier's obligations specified in Section 5.5. The minimum space available to the Government for each outbound (CONUS to Azores) or inbound (Azores to CONUS) sailing shall be no less than 75 – 40' containers, of which 20 spaces must be capable of accepting 40' refrigerated containers; and 2000 square feet of protected breakbulk/vehicle stowage. Each of the 40' spaces offered must be able to accommodate 2 – 20' containers or the vessel(s) must have additional space to accommodate the 20' container shortfall.

2.2 General Scope

The general scope of services under this RFP includes:

Ocean Transportation
Related Intermodal movements and services
Management Expertise

Cargo

Types

Types of cargo to be carried are military cargo, mail, and any other cargo shipped by the Department of Defense (DoD) in the Defense Transportation System (DTS).

Carriage

Cargo shall be loaded and discharged at commercial ports in CONUS and at the commercial terminal in the Azores. The Carrier shall furnish all containers/chassis in CONUS and Azores when required. All cargo shall be stowed so that it is protected from damage due to exposure to the elements. Containers with mail and personal property stowed on deck shall, to the maximum extent possible, be loaded on the bottom tier if consistent with vessel safety.

2.4 Average Minimum Guarantee

The Government shall guarantee a payment of 57 forty foot equivalent units (FEUs) per round trip voyage based on an aggregate sequential voyage average (ASVA) for the minimum service to Port of Praia every 25 days. Additional sailings shall not be included for the purpose of averaging the ASVA. The calculation of the ASVA in accordance with Section 2.4.2 shall determine the entitlement, if any, to such minimum payments. Such minimum payments, if any, shall be rendered to the Contractor at the end of each twelve-month period of the Contract based on an ACO certification to the PCO that the ASVA for the minimum number of voyages falls below the minimum 57 FEUs per round trip voyage. The Government shall compensate the Contractor for each whole FEU that the ASVA falls below the 57 FEU minimum.

2.4.1 Application of ASVA

For purposes of calculating the rate for minimum ASVA payments, the per FEU compensation for any ASVA for a specific voyage that falls below the minimum of 57 FEUs shall be the average of rates as specified in CARE-SM II System of the contract line items - Outbound and Inbound 40 Foot and Over Dry Container Rates for Norfolk Port Area (Zone 1) - for the firm one (1) year period.

2.4.2 Cargo Lift Certification Procedures For Payment of ASVA Minimums

The Contractor, within thirty (30) working days of the end of each twelve month period of the Contract (yearly), shall submit to the COR a worksheet detailing the total cargo lifted on each voyage of the respective year. The Contractor shall add any cargo carried on additional sailings above the minimum required in Section 2.1.1 of the Contract to the nearest minimum sailing's arrival at Port of Praia, Azores in the quarter. Upon certification of the ASVA worksheet by the COR (for that year), the Contractor shall submit an invoice, if entitled, to the JTMOLANT paying activity (or any subsequently identified paying office) under this Contract for any certified minimum payments. Such invoice, if any, shall be accompanied by the COR certified worksheet.

2.5 Period Of Performance

This Contract shall be in effect for all cargo booked to the Carrier or its agent for sailings on or after 0001 hours local time from 12 July 2003 and shall remain in force for all cargo booked to the Carrier or its agent for all sailings scheduled on or before 11 July 2004, or if the First Option is exercised, through 11 July 2005, or of the Second

Option is exercised, through 11 July 2006, or if the Third Option Period is exercised, through 11 July 2007, and if the Fourth Option is exercised, 11 July 2008.

2.6 Limitations Of Carrier's Obligation

2.6.1 Cargo Rejection

Notwithstanding any other provisions of this Contract, the Carrier shall have the right to reject any species of live animals and other cargo deemed by the Carrier to be dangerous or obnoxious in character. Any such cargo accepted for carriage shall be freighted at the General Cargo rate.

2.6.2 Unsafe Operation

The Carrier shall not be required to receive or deliver containers at points or places where it is impracticable or unsafe to operate tractors and chassis due to conditions of roads, streets, or alleys or when prevented from doing so because of fire, acts of God, acts of war, riots, civil commotion, strikes, lockouts, stoppages or restraints of labor or other labor disturbances.

2.6.3 Hazardous Cargo

The transportation and handling of hazardous cargo for shipment shall be subject to Title 49 of the Code of Federal Regulations, Part 171, et seq. (49 CFR) in force at the time of shipment. The Carrier shall refuse to transport hazardous cargo, either by land or by ocean, which does not conform in all aspects to these regulations and any other applicable U.S. governmental regulations. When the Carrier refuses to pick up a container based on non-compliance with appropriate regulations as stated herein, the Government shall reimburse the Carrier the actual line-haul/drayage charge for such container if the Carrier has made a futile trip in connection with such circumstances as a result of Government failure to comply with applicable hazardous cargo regulations.

2.6.3.1 Hazardous Waste Material

When transporting hazardous waste material, the carrier shall obtain an Environmental Protection Agency identification number (40 C.F.R.263.11). Carrier should accept only those hazardous wastes that have been manifested in accordance with 40 C.F.R. 262.20 and 262.20(b). The manifest shall stay with the shipment to its destination. 40 C.F.R 263.20 (c). Carrier shall deliver the waste to the designated TSD facility on the manifest or to its designated alternate facility in case of an emergency. 40 C.F.R. 263.21(a) and (b).

a. Spill Reporting - In the event of an accidental discharge of the hazardous material during transporting the carrier is required to take immediate action to protect human health and the environment as defined in 49 C.F.R. 171.15 and shall be reported orally and in writing to the National Response Center, Office of Hazardous Material Regulations Department of Transportation, Washington, DC 20590. See 33 CFR 153.203, 40 C.F.R. 263.31, State and local laws may require additional notifications. Carrier is liable for spills and discharges of cargo while being transported and is responsible for the cleanup. 40 C.F.R. 263.30 and 31.

b. Storage - Carrier may store material enroute up to ten (10) days at each transfer facility as defined by 40 C.F.R. 260.10, 263.12 and 268.50 (a) (3) without becoming a TSD facility. If storage exceeds the ten days at any transfer facility, then the carrier shall issue a new manifest and sign and return to the initial shipper its original manifest. Carriers transporting hazardous waste material into the United States from abroad or who mix hazardous wastes of different DOT shipping descriptions into the same container shall also meet the standards applicable to hazardous wastes shippers.

3.0 GENERAL

3.1 Performance Requirement

Performance Requirements in this document are expressed in the following manner:

Each performance requirement may contain the following three elements. In each case, when taken together, these elements constitute a performance requirement.

Performance Objective – The desired outcome or result expected of the contractor (not output!)

Performance Measures – The critical characteristics or aspects of achieving the objective that will be monitored by the Government, those things that the Government will analyze. Each objective may have one or more measures.

Performance Standards – The targeted level or range of levels of performance measured.

Use of Performance Measures/Standards

Not every performance objective in this contract has a related performance measure or performance standard. However, every performance objective is a contractual requirement. For those performance objectives that do not specify a measure or standard the measures and standards are IAW standard commercial practices, i.e., substantial compliance with local customary trade practice. Unless otherwise noted, performance objectives without measures and standards imply standards of 100%. Performance measures/standards, where specified, may be used to achieve a variety of goals, including collection of data to test the practicality of a performance standard; identification of a performance standard of less than 100% compliance; emphasis on most critical performance objectives; collection of data to support quality assurance and contractual remedies (including evaluation of past performance, discussion at Quality Council meetings etc.) and similar goals.

3.2 Transportation Services

The Carrier's shall maintain a regularly scheduled and consistent commercial liner term service on this route throughout the period of the contract via a self-sustaining or self geared vessel(s) conforming to the services offered in the Contractor's technical proposal and schedule as specified in Integrated Booking System (IBS).

3.2.1 Vessel Schedule

Performance Objective No. 1 Published Schedule - The Carrier shall provide an updated sailing and arrival schedule, including pier cut-off, of not less than five (5) sailings to MTMC via e-mail at least every 45 days through the life of the Contract.

Performance Measures:

COR will monitor scheduled sail/arrival dates.

Performance Standards:

100%

Performance Objective No. 2 IBS Schedule Entry – Carrier shall enter schedules into IBS on MTMC's internet-based systems. Carrier shall use MILSTAMP port codes to identify ports-of-call. Carriers shall submit schedules to IBS using formats approved by the IBS Program Management Office.

Performance Measures:

OCCA will monitor schedule

Performance Standards:

100%

Liquidated Damages – Timeliness of initial submissions. Vessel schedule data provided to MTMC less than 45 days before the earliest sail date on the schedule will be considered a late submission and the Carrier shall be assessed a liquidated damage of \$250 per voyage. Damages will be assessed quarterly.

Performance Objective No. 3 Changes - Any change to the projected schedule shall be reported not less than seven (7) days prior to the next scheduled port call. Schedule performance shall be based on schedule in effect 7

days prior to POE sail date. Any slippage in scheduled sailing date/arrival date by more than one (1) day shall be reported in writing to the COR and entered into IBS.

Liquidated Damages - Reliability. Actual POD arrivals of more than two days from the scheduled POD arrival dates in effect 7 days prior to sail date will be considered as unreliable and subject to liquidated damages of \$50 for each POD on the schedule with delivery slippage of more than two days. Damages will be assessed quarterly.

3.2.2 Position Reports

Performance Objective No. 4 Daily Position Reports - When specifically requested by the ACO or the Contracting Officer, the Carrier shall furnish the Government with the daily position of the vessel(s) serving this Contract.

Performance Objective No. 5 Notice of Arrival - Carrier shall notify the Government activity having cognizance over each port where Government cargo is to be discharged under this Contract of the impending arrival of the vessel. Such notice shall be given at least 48 hours prior to arrival indicating any variation from or correction to information previously furnished and the Carrier shall submit the crew list at the same time when arriving at the Azores.

Performance Objective No. 6 Service Frequency - The Carrier's vessel(s) must call at discharge and loading ports at intervals not to exceed twenty-five (25) days or COR approved variations. COR may approve variations due to holidays and weekends to minimize exposure to Azores transportation costs.

Performance Measures:

Arrival dates

Performance Standards:

90% per year, but
NTE 27 days

Performance Objective No. 7 Transit Time - The Carrier's transit time shall not exceed eleven (11) days from the last CONUS port of loading to Port of Praia, Azores and eleven (11) days from Port of Praia, Azores to the first discharge port in CONUS.

Performance Measures:

Transit times

Performance Standards:

90% per year, but
NTE 14 days

Performance Objective No. 8 Discharged Cargo - For inbound cargo (Azores to CONUS), inland cargo delivery transit after port clearance (commencement of delivery) shall not exceed one day for every 300 miles of the shortest road distance from the port of discharge (see paragraph 5.15).

3.2.3 Business Management/Relations

Performance Objective No. 9 Business Management – The Carrier shall develop a Business Management Plan that shall address how the Carrier will develop an ongoing annual schedule. In this development MTMC will work with the Carrier to develop a schedule using knowledge of Port Tariffs for the Port of Praia and the list of annual Portuguese holidays to minimize total MTMC transportation costs for this service. The Business Management Plan shall address how the Carrier will incorporate preventive maintenance for the vessel(s) proposed for this contract and also what recovery plan(s) the Carrier will implement in the case of vessel breakdown. Finally, the Plan shall address how the Carrier shall ensure prompt submission of invoices to MTMC. The Business Management Plan shall be updated annually.

3.2.4 Risk Management

Performance Objective No. 10 Risk Management Plan – The Carrier shall include a Risk Management Plan as an Appendix to the Business Management Plan. The Risk Management Plan shall identify those areas included in annual operations that have a risk to meeting stated Performance Objectives, the source of each risk (e.g., weather conditions) identified and when the risk(s) are likely to impact operations, an assessment of whether each risk is high, medium or low in the judgment of the Carrier, the impact of each risk if it prevents a Performance Objective from being met either fully or partially, and the method the Carrier will employ to minimize each risk. Finally, the Plan shall address how problems encountered during operations will be communicated to MTMC, and if problems encountered were not part of the original risks identified, how they will be added to the Risk Management Plan and included in the annual update.

3.3 Cargo

Performance Objective No. 11 All Cargoes - The Carrier shall carry any and all cargoes offered by the Government up to the capacity of the vessels offered for use in this trade, with the exception of those limitations of the Carrier's obligations specified in the contract. Government cargo shall take precedence over commercial cargo.

Performance Measures:

Performance Standards:

Rejected booking versus capacity

0%

Performance Objective No. 12 Space - The Contractor shall provide minimum space to the Government for each outbound (CONUS to Azores) or inbound (Azores to CONUS) sailing of not less than 75 - 40' containers, of which 20 spaces must be capable of accepting 40' refrigerated containers; and 2000 square feet of protected breakbulk/vehicle stowage. Each of the 40' spaces offered must be able to accommodate 2 - 20' containers or the vessel(s) must have additional space to accommodate the 20' container shortfall.

3.3.1 Electronic Data Interchange

3.3.1.1 Electronic Communication

Performance Objective No. 13 EDI/OCI Protocols – The Contractor shall use Electronic Data Interchange (EDI) protocols or Ocean Carrier Interface (OCI) as the primary means for interfacing with the Military Traffic Management Command (MTMC).

In those Government locations where neither EDI nor OCI are available (Integrated Booking System (IBS) is not supported), the Contractor shall use e-mail and/or facsimiles. Upon one hundred-eighty (180) days advance notice, at the effective date provided by the ACO or CO, the Contractor shall commence the use of EDI or OCI with those booking offices where neither are currently available.

Interface using the following order of preference:

EDI
OCI
Facsimile

MTMC will make OCI training available as required to Contractors.

3.3.1.2 Transaction Sets and Concepts of Operations

The Contractor shall use the Defense Transportation Electronic Data Interchange (DTEDI) approved Implementation Convention for the ANSI X-12 300, 301, 303, and 315 transaction sets in compliance with their approved concepts of operations. Versions 3060, 4010 or later are required. The Contractor shall implement changes to business processes contained in revisions to Transaction Set Implementation Conventions and their

controlling concepts of operations as may be approved by the Ocean ACI Committee. These changes shall be implemented in accordance with schedules approved by the Ocean ACI Committee.

3.3.2 Containers and Chassis

Performance Objective No. 14 Delivery of Containers for Loading – Carrier shall furnish to the government, a clean, dry, empty, odor free, structurally sound ISO container on a chassis at a specific point and date, designated by the Government by booking terms including:

- spotting the empty containers;
- moving the stuffed container between the designated point and the Carrier's commercial terminal;
- receiving and handling the stuffed container at its loading terminal;
- loading in CONUS;
- transporting both outbound and inbound containers in the Carrier's vessel;
- discharging in CONUS;
- handling the container at the Carrier's receiving terminal, including obtaining Customs clearance; and
- delivering the container to its inland destination.

At the election of the Government and with sixty (60) calendar days advance notice from the Ordering Officer (OO), the Carrier's container service shall also consist of furnishing to the Government, a clean, dry, empty, odor free, structurally sound container on a chassis (which shall remain with the containers while they are in the custody of the Government, unless waived by the OO) at a specific point in the Azores designated by the Government (within the general locations set forth in CARE-SM II System). Chassis provided by the Carrier shall be compatible with Government/Contractor furnished tractors, unless waived by the OO. When the Government requires stuffing at a place not set forth in CARE-SM II System, the Carrier shall make empty containers on chassis available at its terminal. In CONUS only, the Ordering officer (OO) will give the Carrier at least two working days notice where to spot an empty container. The notice will include the following:

- type and size of container required,
- the name and address of the shipper,
- the date, and
- approximate time (a.m. or p.m.) for spotting the container, (which will not be later than five working days prior to the port cut-off date set by the Carrier)
- categories of cargo to be stuffed in the container (i.e., General Cargo, Mail/Mail Equipment, Vehicles, or Refrigerated Cargo).

The Carrier shall pick-up and remove a stuffed container from the Government facility within one working day unless waived by the COR. The Carrier shall remove an empty container(s) within 72 hours unless waived by the COR.

Pickup time provisions shall commence at 0800 hours on the day following carrier's receipt of notification that the container is in all respects ready to be transported, unless this requirement is waived by the OO. Time shall not run during Saturdays, Sundays, and locally observed holidays (see Section 5).

Performance Measures:

Failure to meet booking terms
Failure to meet sailing date

Performance Standards:

2 containers per voyage
0% deviation per voyage

Performance Objective No. 15 Furnished Chassis - In Port of Praia, the Contractor shall provide a minimum of 30 chassis (seven (7) 20-ft. chassis and twenty-three (23) 40-ft. chassis), properly maintained in roadworthy condition, or an amount mutually agreed to by the OO or designee, and provide appropriate spreader bars and other container handling equipment to accommodate Government loading and discharging.

Performance Measures:

Size and number of chassis
at Azores

Performance Standards:

0% unless waived by the OO

3.3.3 POV Transport

Performance Objective No. 16 – Partial Service Privately Owned Vehicles (POVs) - CONUS/OCONUS POVs moving between contractor operated CONUS/OCONUS VPCs and Government operated POV facility. The ocean carrier service shall consist of receiving POV's from the customer or the Government's agent at a specific point designated by the Government and perform a Joint inspection with the POV carrier prior to the release of the POV to the contractor by the Government; transport POV's both outbound and inbound; discharging the POV at its receiving terminal in CONUS or releasing the POV to Government personnel or agents at Azores terminal in the same condition as tendered; and perform a Joint inspection with the POV carrier prior to the release of the POV to the customer or Government's agent.

Performance Measures:

Carrier Damages NTE

Performance Standards:

\$500 claims per year

The booking of POV's with the contractor is premised on the ability of the contractor to achieve the RDD associated with each individual POV. The ability of the contractor to achieve the POV RDD is determined by reference to the Ocean Transit, Inland Delivery and other time periods provided herein concerning the overall movement of cargo from the time it is tendered to the contractor by the government at origin until it is delivered at the designated destination in the booking shipping order. In accepting a POV booking/shipping order, the contractor warrants that it can achieve delivery of the POV by the designated RDD under the terms and conditions of this contract. If the contractor fails to deliver a POV on or before the RDD, the Contracting Officer shall assess \$30.00 damages per diem against the contractor. Damages shall be assessed for each day that the delivery exceeds the RDD, including the day of delivery, up to a maximum period of seven calendar days (maximum contractor liability of \$210.00 per POV). The contractor may be exonerated from this liability only under circumstances constituting Force Majeure or an Excusable Delay (FAR 52.249-8 entitled Default (Fixed Price Supply and Service) Alternate I (APR 84)). The contractor is at all times required to deliver the POV as soon as possible following the conclusion of any Force Majeure or Excusable Delay circumstance. If the failure to achieve delivery by the RDD is partially excused, damages shall be assessed on a pro-rata basis. The contractor bears the burden of establishing exoneration on the basis of any Force Majeure or Excusable Delay circumstance.

3.3.4 Inland Delivery

3.3.4.1 CONUS Basic Service

Performance Objective No. 17 Establishment of Delivery Time- The Carrier shall contact the consignee to establish a delivery time not later than two (2) working days from arrival.

Performance Objective No. 18 Discharge of the Container - Unless delay is requested by the OO, the Carrier, after the discharge of the container from the vessel, shall commence inland transportation within one (1) working day of discharge for containers loaded with mail or refrigerated cargo and within two (2) working days of discharge for containers loaded with dry cargo. Vehicles in containers shall be delivered within forty-eight (48) hours after the container has been discharged from the vessel. Upon delivery, the Carrier shall present the consignee with a delivery receipt designating: warehouse destination, pieces, weight, cube, cargo description, and Transportation Control Number (TCN) for the container.

Performance Measures:Performance Standards:

On-time performance 100%

3.3.4.2 AZORES Basic Service

Normally, Government will arrange drayage in the Azores.

Performance Objective No. 19 Inland Delivery Service (Azores) - If Carrier inland delivery service is so elected by the Government, the Carrier shall contact the consignee to establish a delivery time. Unless delay is requested by the ACO, the Carrier, after the discharge of the container from the vessel, shall commence inland transportation within one (1) working day of discharge for containers loaded with mail or refrigerated cargo and within two (2) working days of discharge for containers loaded with dry cargo. Vehicles in containers shall be delivered within forty-eight (48) hours after discharge from the vessel. Upon delivery, the Carrier shall present the consignee with a delivery receipt designating: destination warehouse, pieces, weight, cube, description of cargo, and TCN for the container.

Performance Measures:

Performance Standards:

On-time performance 100%

3.4 Accessorial Services

Government reserves the right to provide ISO containers. See paragraph 4.5.2.

Performance Objective No. 20 Super Cargo- The Contractor shall provide Super Cargo transportation service when required by the booking. The service shall consist of transporting, feeding, and accommodating on the vessel one or more personnel designated by the Government to accompany the cargo.

The Carrier shall be compensated for this service in accordance with the rates set forth in CARE-SM II System.

3.4.1 Flatracks

Performance Objective No. 21 Flatracks - The Carrier shall provide to the Government the number of ISO flatracks the Government has ordered by the OO at least two weeks prior to the intended sailing of the Carrier's vessel.

The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System.

3.4.2 Hazardous Waste Material

Performance Objective No. 22 Hazardous Waste Transport - Carrier shall provide both 40ft and over and under 40ft empty containers at the Port of Praia for hazardous waste material required to be shipped inbound to CONUS (Newport News, VA).

The material may consist of, but is not limited to, antifreeze, soil, asbestos, corrosive liquid and solids, polychlorinated biphenyl (PCB)'s, regulated and non-regulated flammables, and oils and lubricants. The Carrier shall provide to designated Government and/or Government contractor personnel access to its port terminal facility to implement CONUS disposal operations.

The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System.

3.5 Refrigerated Containers

3.5.1 General

Self-sustaining refrigerated containers, not more than two years old at contract service inception, shall be provided by the Contractor for this service.

Performance Objective No. 23 Refrigerated Containers– Contractor shall provide to the stuffing activity self-sustaining refrigerated (reefer) containers in good working order, pre-cooled to the in-transit temperature specified by the Government.

Performance Objective No. 24 Freeze - Containers shall be maintained at an internal temperature within three (3) degrees Fahrenheit of the specified in-transit temperature from the time of initial stuffing until un-stuffed at final destination.

Performance Measures:

Performance Standards:

Temperature	+/-3 ⁰ of specified
Evidence of Thawing/Product Damage	0%

The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System.

Performance Objective No. 25 Chilled- For Chilled Cargo in refrigerated containers only, the in-transit temperature specified in the booking/shipping order for service shall be maintained by the Carrier at an internal temperature within plus or minus two (2) degrees Fahrenheit of the specified temperature from the time of initial stuffing until un-stuffing at final destination providing that such variance does not allow cargo freezing.

Performance Measures:

Performance Standards:

Temperature	+/-2 ⁰ of specified
Product Damage	0%

The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System.

Performance Objective No. 26 Controlled Atmosphere - The Carrier shall provide controlled atmosphere service consisting of a self contained computerized system capable of monitoring and adjusting the atmosphere in a refrigerated container after the carrier has introduced preservative gases in the container.

Performance Measures:

Performance Standards:

Evidence of spoilage at destination	0%
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The system is designed to reduce spoilage and extend shelf life of perishable commodities similar to modified service, but differs by its ability to adjust the air inside the container during transit. Not normally used.

The Carrier will be compensated for this service in accordance with the rates set forth in CARE-SM II System.

3.5.2 Carrier Inspection of Contents

Upon receipt, the Carrier may open stuffed reefer containers to inspect the condition, stuffing, or the temperature of the cargo. When the Carrier is of the opinion that the cargo is unsuitable for shipment to the specified destination, the Carrier shall immediately advise the OO of such condition, and request a written decision regarding shipment of the container.

3.5.3 Temperature Recording

Performance Objective No. 27 Temperature Recorders – The Carrier shall furnish two operable continuous temperature recording instruments (to include at least one interior Ryan type recorder), in each refrigerated container ordered. These instruments shall measure and record in a legible manner any variation in temperature of one-degree Fahrenheit or more inside the container during the time it is stuffed with cargo. The Carrier shall make available the original printed records of the temperature maintained during the transit from origin to destination for inspection by the receiving activity when the container is delivered.

3.5.4 Maintenance

Performance Objective No. 28 Electrical Systems – It is the sole responsibility and cost of the Carrier to maintain its refrigerated container equipment in good working order from time of spotting to time of delivery to consignee. Reefers shall arrive at spotting inspected and certified by the carrier as being capable of operating at 220 and 440 electrical volts.

Performance Measures:

Performance Standards:

Evidence of spoilage or damage

0%

3.6 Breakbulk Service

3.6.1 Basic Service

Performance Objective No. 29 Breakbulk Cargo- The Carrier shall provide breakbulk service consisting of receiving cargo at a specific point designated by the Government; transporting the cargo between this point and the Carrier's commercial terminal; loading; transporting over ocean; discharging the cargo at its receiving terminal; and line haul, as required. Note: Line haul is not required in the Azores. Breakbulk service shall be provided in accordance with the terms and conditions for containerized service, as applicable. Cargo may be containerized for carrier convenience.

3.7 Documentation

3.7.1 Load Port

The Carrier shall provide (by mutually agreeable electronic means) the cognizant MTMC activity and the activity responsible for cargo documentation with the following information and hard copy documentation, in connection with cargo loaded at each port.

3.7.1.1 Container Receipt Information

Performance Objective No. 30 Container Receipt Data –The Carrier shall provide accurate container receipt information. Container receipt information shall consist of carrier name, port of loading, date container received at port, container number with ALPHA prefix, TCN, and seal and/or keyless lock number. This data shall be provided electronically within four (4) working hours of container receipt by the carrier. The hard copy shall be transmitted within one (1) working day of container receipt by the carrier.

Performance Measures:

Performance Standards:

Accuracy rate of container number

100%

Accuracy of associated information

97%

3.7.1.2 Cargo Receipt

Any receipt signed by or on behalf of the Master shall be without prejudice to the terms, conditions, and exceptions of this Contract, and subject to all of them. The Government fully warrants the accuracy and completeness of all

papers and documents relevant to the shipment of all cargo tendered under this contract supplied by the Government to the Carrier.

Performance Objective No. 31 Receipt and Recordings of Exceptions - The Master shall sign the manifest or receipt acknowledging receipt of the cargo in apparent good order and condition or he/she shall record thereon any apparent damage to or shortage of such cargo or any other specific exception to the cargo as listed on the manifest or receipt.

For containerized cargo, both received by the Carrier and delivered at destination under seal, the Master's receipt acknowledges only the apparent good order of the container.

3.7.1.3 Container Lift Information

Performance Objective No. 32 Container Lift Information – The Carrier shall provide accurate container lift information consisting of the following: name of vessel and voyage document number, container number with ALPHA prefix, TCN, port of discharge, final destination, general description of container contents (i.e., general cargo, mail/mail equipment, POV, other vehicles, refrigerated cargo), and seal and/or keyless lock number. This data shall be provided electronically within eight (8) working hours after vessel departure. Hard copy shall be transmitted within one (1) working day after vessel departure.

Performance Measures:

Performance Standards:

Accuracy rate of container number
Accuracy of associated information

100%
97%

Performance Objective No. 33 Seal Breakage - The Carrier shall notify the ACO with a complete report if a seal on any container has been broken and/or replaced while in the Carrier's custody.

Performance Objective No. 34 – Discrepancy Report. The Carrier shall provide both the cognizant MTMC activity and local activity responsible for cargo documentation a listing by container number and TCN of containers which were booked but not loaded, and the reasons why the containers missed their designated scheduled sailing, or containers loaded but not booked. Such reports, shall be furnished electronically within eight (8) working hours after vessel departure. Hard copy shall be transmitted within one (1) working day after vessel departure.

Performance Measures:

Performance Standards:

Receipt of carrier reports with
Shipping Orders/Clearance Orders
and military manifests

100% performance unless
waived by manifesting activity

3.7.2 Discharge Port

Performance Objective No. 35 Discharge Report – The Carrier shall provide the MTMC activity having cognizance over each port where containers are discharged with a discharge report. This report shall be provided for each container discharged as soon as practicable after discharge, but not later than twenty-four (24) hours prior to either the commencement of drayage/line-haul or availability for drayage/line-haul (drayage/line-haul not applicable in the Azores) and shall include the following: name and voyage number of vessel making delivery; name and voyage number of original carrying vessel if transshipped; estimated date, time and mode of commencement of drayage or line-haul from discharge port to inland destination; container number; and consignee.

3.7.3 Prestow Plan

Performance Objective No. 36 Prestow Plan - The Contractor shall provide the Government with two copies of a cargo pre-stowage plan at least 48 hours prior to the scheduled arrival of the vessel (plus 24 hours for each Sunday

or locally observed holiday that occurs on the day of arrival or the two days preceding the day of arrival) at the loading port indicating the specific location, pertinent dimensions and total cubic measurement of the spaces available for loading the cargo booked at that port. At the same time, the Carrier shall furnish the Ordering Activity confirmation of the date and time of loading.

3.7.4 Operational Reports

Performance Objective No. 37 Shortfall Notification - The Carrier shall provide notice within twenty-four (24) hours to both the Contracting Officer and the ACO of any operational shortfall that occurs relative to the service.

Examples of operational shortfalls include sailing delays, container unavailability, strikes, receiving delays, port backlogs, and equipment failures such as ship cranes, etc.

3.7.5 DoD Intransit Visibility Requirements

3.7.5.1 Shipment Tracking

Performance Objective No. 38 Tracking and Tracing – The Contractor shall provide tracing and tracking capability.

3.7.5.2 Tracking Data

Performance Objective No. 39 Tracking Data – For those transportation and intermodal services provided by the Contractor to meet booking requirements, the Contractor shall provide shipment status reports using the 315 transaction sets in ANSI X-12 EDI standard or OCI to MTMC to enable the Government to track shipments and to support the MRM15 initiatives. Listed below are the reports which the Government requires. Contractor is not required to report events that are outside the scope of the booking.

Performance Measures:

- a) Provide accurate 315 transaction set
- b) Submit 315 report within 24 hours of accomplishing the event.

Performance Standards:

- 100%
- 100%

<u>Code</u>	<u>Meaning</u>	<u>Notes</u>
EE	Empty spotted	Empty container outgate in lieu of actual spot is acceptable for shippers having container pools
W	Pickup of Loaded container	Required only if Contractor provides inland dray/line-haul
I	In-gate	At Port of Embarkation (POE)
VD	Vessel sails	This report is required at POE and at transshipment ports
VA	Vessel arrival	Report actual vessel arrival in 4 hrs
UV	Vessel discharge	This report is required at POD and at transshipment ports

Carrier shall respond to cargo offers within same business day as receipt of the offer. In gate, sail, and discharge shall be reported within 4 hours of the event. Other events shall be reported within two business days of the event.

3.7.6 Exceptions to EDI Requirements

As circumstances warrant, the PCO may unilaterally modify these requirements, in whole or part, to exempt Carriers from specific EDI requirements. This modification may be for a specified time period, or for the duration of the contract.

3.7.7 EDI

EDI addressing and testing requirements information will be provided by HQ, MTMC (JTMO). Point of Contact to address any questions is Mr. Joe Crandell, Tel (703) 428-2488.

3.8 Quality Council Meetings

Performance Objective No. 40 Quality Council Participation – The Contractor shall participate with the Government in an effort to continuously improve the processes involved in providing excellent international cargo transportation services.

Quality Council membership may consist of MTMC representatives, cargo shippers, ACO, COR, other contracting personnel, receiving activities, and the Carrier.

The Contractor's assistance shall include participation (preparation, active participation, and follow-up) in semi-annual quality council meetings during each year of this contract. The purpose of the Quality Council meetings is to identify and develop solutions to operational problems.

3.9 Liquidated Damages

3.9.1 FAR 52.211-11 Liquidated Damages--Supplies, Services, Or Research And Development (Apr 1984)

a. If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay.

b. Alternatively, if delivery or performance is so delayed, the Government may terminate this contract in whole or in part under the Default--Fixed-Price Supply and Service clause in this contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination clause.

c. The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Default--Fixed-Price Supply and Service clause in this contract.

3.9.2 Liquidated Damage Records

The ACO will determine if any liquidated damages are due to parties to the contract.

a. For liquidated damages due to the Government, the COR shall provide the ACO a list identifying cargo shipments in default, frequency of service defaults and assured transit defaults, during each month of Contract period. The ACO shall send Liquidated Damage Calculation Notice (LDCN) to the Carrier with a copy to the PCO, of the specified defaults within 10 working days after the end of each month of the Contract period. The Carrier will have 10 working days from the date of LDCN to review and provide the ACO with any documentation

available to substantiate a correction to the LDCN. The ACO shall have 10 working days to review the Carrier's submission and issue an amended LDCN if required. In the event that the Carrier and the ACO are unable to reach agreement, the ACO shall refer that portion of the LDCN to the PCO for a determination. The Government shall adjust the amount of any LDCN against monies due and payable under any shipping order at regular intervals. However, no disputed portion of the LDCN shall be offset until the PCO has rendered a decision.

b. For liquidated damages due to the Carrier, the ACO shall submit within 10 working days of the end of each three month period of the contract to the Carrier, with a copy to the PCO, a statement of the guaranteed quantity of cargo offered under the Carrier's Contract. A cumulative final statement for the Contract shall be submitted within 10 working days of the Contract expiration and payment will be due to the Carrier within 30 days after the final statement is issued.

In the event that the parties are unable to reach an agreement, the ACO shall refer that portion of the LDCN to the PCO for a determination. No disputed portion of the LDCN shall be payable to the Carrier until the PCO has rendered a decision.

4.0 CONTRACT ADMINISTRATION

4.1 Administrative Contracting Officer

The Administrative Contracting Officer (ACO) performing Contract administration for this Contract is James O'Brien; located with the Military Traffic Management Command, at (703) 428-2110, fax number (703) 428-3362.

4.2 Shipping Orders

When transportation services are ordered under this Contract, a shipping Order substantially in the form of the Clearance Order/Shipping Order (JTMO Form 4612/1) (Attachment 2) will be issued by the Government. The Government will prepare all necessary papers including vessel papers or manifests listing the cargo stowed in containers aboard the vessel. Such papers, including vessel papers or manifests, shall be receipted by the Carrier or his agent, and shall be evidence of ownership. These documents and the Shipping Order shall be deemed to be an Order within the meaning of the Ordering Clause (FAR 52.216-19). The OO shall provide the Carrier with written notice of the Government activities authorized to issue Shipping Orders.

4.3 Container Size Ordered/Provided

When ordering ISO containers from the Carrier, the OO will specify the type, length, height, and capacity of the container required. The Carrier shall not furnish a container of a different type or cubic capacity than that ordered without the written consent of the OO. If the OO allows the Carrier to substitute a larger size container than booked, and the loaded shipment does not exceed the cubic capacity of the size container originally ordered, the Government shall pay for the size ordered. If the loaded shipment exceeds the cubic capacity of the size container originally ordered, the Government will pay for the size container actually furnished.

4.4 Application Of Rates

4.4.1 Expression of Rates

All rates appearing in CARE-SM II System are stated in U.S. dollars and cents per the applicable unit of measure.

4.4.2 Containerized Cargo

Containers stuffed with general cargo (including mail/mail equipment), refrigerated cargo, vehicles, neo-bulk cargo (bulk commodities in tank containers), controlled atmosphere cargo, hazardous material cargo, flatrack service, and recyclable cargo shall be freighted at the appropriate rate(s) stated in CARE-SM II System.

4.4.3 Breakbulk Cargo

Breakbulk cargo shall be freighted by applying the applicable rate to the manifested measurement tonnage of the cargo. Cargo booked as breakbulk cargo shall be so freighted, regardless of whether containerized for the Carrier's convenience.

4.5 Exceptions To General Application Of Rates

4.5.1 Carrier Imposed Weight Restrictions

When a container is precluded from being utilized to its maximum capacity because of Carrier imposed restrictions which limit the weight carrying capacity below the maximum weight carrying capacity of the container, the cargo shall be freighted at the applicable measurement ton basic rate applied to the manifest measure of the cargo applied pro-rata to useable carrying capacity (e.g., if the maximum capacity of the container is 20,000 lbs, but the restricted capacity is 15,000 lbs, the container shall be freighted at 75% of its usual measurement ton rate).

4.5.2 Government Furnished Containers

The Carrier's charges for through transportation of commercially acceptable Government containers will be ninety-five percent of the appropriate rate for that cargo commodity. The Carrier's charges for empty Government containers shall be one-half the appropriate rate for that container type. Tank containers are exempt from this provision since the tanks are exclusively government furnished equipment.

4.5.3 High Cube Containers

If the Government orders the use of a high cube (9'6" high) container, the Carrier will be paid 115% of the appropriate container rate in CARE-SM II System.

4.5.4 Over Dimensional and Unusual Size Cargo Service

(1) Over dimensional cargo is defined as cargo that when booked to be shipped as a unit of cargo in/on a single container does not exceed the following maximum weight and dimensions:

Weight: 48,000 lbs.
 Length: 40'0" (480")
 Width: 11'0" (132")
 Height: 11'6" (138")

In addition, over dimensional cargo is considered to be cargo within the above maximum dimensions and weight which has a dimension (length, width, or height) that exceeds any external dimension of the container most suitable to the cargo when loaded and measured in/on such container. Selection of the equipment used for ocean transportation shall not result in over length dimensions when the cargo is loaded on a 40-foot flatrack, not a 20-foot flatrack.



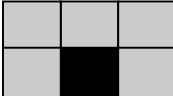
(2) Charges for over dimensional cargo stowed on a vessel in containers shall equal the additional ocean rate for equivalent displaced standard dry container(s) by size, in accordance with the following formula (which includes use of a flatrack container):

In gauge: BOF (Basic ocean freight)
 +FRS (Flat rack surcharge)
 TC (Total charge)



Over height: BOF+(BOF x 60%)
 +FRS



	TC	
Over width:	$\frac{BOF + ((BOF \times 2) \times 60\%) + FRS}{TC}$	
Over height and and over width:	$\frac{BOF + ((BOF \times 5) \times 60\%) + FRS}{TC}$	

A 40 percent discount shall be applied for displaced slots in any configuration.

If other than flatracks are used to ship over dimensional cargo, the flatrack surcharge shall not be applied to the formula.

Flatrack surcharges shall not apply to Government owned flatracks in the rate computation for over dimensional cargo.

Displaced slots for which charges are assessed will be counted toward the minimum cargo guarantee.

Cargo that cannot be loaded on or in an intermodal container (closed, open top, flatrack) prior to stevedoring is not covered by this formula.

The over dimensional formula is limited to port to port terms only.

This formula can be applied to cargo exceeding either the weight and/or the dimensions defining over dimensional cargo when the Government and the carrier mutually agree to do so at the time of cargo booking.

Vacant slots for which charges are assessed will be counted toward the average minimum cargo guarantee stated at 2.4 of this section.

The Government reserves the right to ship oversized/over dimensional cargo on breakbulk terms. The Carrier, at its discretion, may elect to containerize the cargo, but at no additional cost to the Government above those breakbulk rates set forth in the CARE-SM II System.

4.6 Refunds, Rebates And Credits

The Carrier agrees that any refunds, rebates, credits or other amounts (including any interest thereon) accruing to or received by the Carrier under this Contract shall be paid by the Carrier to the Government to the extent that they are properly allocable to costs, expenses or reimbursements for which the Carrier has been reimbursed by the Government under the terms of this Contract.

4.7 Agreed Cost Responsibility

4.7.1 General

As a means of facilitating the administration of this Contract, the parties have agreed that certain items of cost anticipated as likely to arise in the performance of their respective duties under this Contract shall be listed. Determinations of responsibility for items of cost agreed by the parties under this Section are intended to be consistent with the substantive clauses of this Contract; provided however, in the event of conflict, the substantive clauses of the Contract shall prevail.

4.7.2 Responsibility of the Carrier

The Carrier is responsible for the costs associated with the following services:

4.7.2.1 Furnishing and maintaining containers and chassis

4.7.2.2 Drayage of containers in CONUS

Including: furnishing and maintaining tractors; furnishing drivers; CONUS delivery costs of movement of containers, including tractors and driver; highway, ferry, tunnel and bridge tolls; and user taxes.

4.7.2.3 Vessel Operations

All costs of the vessel operation and all CONUS port charges and other expenses charged to the carrier's vessel in CONUS ports.

4.7.2.4 Container Terminal Costs

All CONUS container terminal costs including: receipt of containers; stevedoring; port handling; marshaling of containers; and cleaning containers before stuffing and after un-stuffing.

4.7.2.5 Taxes, dues, fees and other charges

Taxes, dues, fees and other charges (including storage charges levied by governments, ports authorities, or wharfingers) on breakbulk cargo, on the containers, and on their contents, if any, except those charges which are payable by the Government.

4.7.2.6 Handling charges

Handling charges including terminal tariff handling charges according to the custom of the port; agency fees in connection with port clearance of cargo.

4.7.3 Responsibility of the Government

The Government is responsible for the cost of the following services:

4.7.3.1 Respot of containers

Respot of containers within a Government facility, supply point or vendor's plant.

4.7.3.2 Container stuffing and un-stuffing

Container stuffing and un-stuffing including: labor employed; packing material and/or dunnage employed; preparing documentation; sealing the container; removal of packing material, dunnage and placards; and sweeping.

4.7.3.3 Miscellaneous dues, fees and charges

Miscellaneous dues, fees and charges including: cargo surveyor fees when services are ordered by the Government or when resulting from dispute between the Government and the Carrier resolved in favor of the Carrier; drayage or line-haul charges listed under Section 4.7.2.2 above when performed by the Government.

4.7.3.4 All fees

All fees charged to the vessel and port storage charges for containers and cargo by the commercial Port of Praia, Azores shall be to the Government's account.

4.7.3.5 Stevedoring and port handling straight time

Stevedoring and port handling straight time worked in Port of Praia unless the Government elects to employ Carrier liner services in the Port of Praia. Cargo operations outside normal operating hours shall be undertaken and costs distributed as mutually agreed upon.

4.7.3.6 Additional personnel

Additional personnel ordered by the Government including: transportation and travel time of stevedore personnel when ordered by the Government for its account; overtime for customs, agriculture or public health officers provided for the convenience of the cargo, when requested by the Government.

4.7.3.7 Contaminated cargo costs

Contaminated cargo costs including: fumigation required solely because of contaminated Government cargo, including related costs and detention; crew overtime in connection with standby security watch when required by the ACO during loading and discharging; crew wages, fringe benefits and related payroll tax when ship's crew are performing longshore work in cargo operations at the request of the terminal or by custom of the port including members of the steward's department required to prepare additional meals.

4.7.3.8 Handling charges

Handling charges including customs and other fees, dues and/or taxes charged to the cargo; harbor and quay dues charged to cargo based on local tariffs.

4.7.3.9 Cargo landing and wharfage charges

Cargo landing and wharfage charges including: landing charges against cargo in accordance with the regulations of the port, including those billed by port authorities to the ship; and wharfage charged to military cargo unless the Government elects to utilize the carrier's Liner Terms.

4.7.3.10 All Azores container terminal costs

All Azores container terminal costs including: marshaling of containers; and cleaning containers before stuffing and after un-stuffing. These remain a Government cost responsibility unless the Government elects to utilize the carrier's Liner Terms.

5.0 SPECIAL CONTRACT REQUIREMENTS

5.1 References to "Master" or "Crew"

All references in this Contract to "Master" or "Crew" or other ship's personnel shall be deemed to be references to "Carrier's Representative" except when the context precludes such reading.

5.2 Limitation Of Government Liability

5.2.1 Dead Freight

The Government shall not be liable for payment of dead freight.

5.2.2 Required Delivery Dates

Notwithstanding any other provisions of this Contract, the Government may make alternative transportation arrangements, without notice to the Carrier, for any cargo that the Carrier cannot deliver by the Required Delivery Date (RDD) provided by the ACO for that cargo. The determination to make alternative transportation arrangements on the basis of RDD shall be made by the OO after submission of a request in writing from the ACO for such arrangements.

5.3 Excepted Category Cargo

Excepted category cargoes are listed below. Pursuant to the Changes Clause (FAR 52.243-1 Alternate IV), rates for their carriage may be negotiated by the Contracting Officer prior to booking. The Carrier shall not accept excepted category cargo for shipment unless a rate for its carriage has been negotiated with the Contracting Officer or the Contracting Officer has issued an unpriced change order pursuant to FAR 52.243-4, (AUG 1987). Cargo categories not excepted below and for which specific rates do not appear herein, shall be carried at the applicable General Cargo rate.

- Aircraft (unboxed)
- Bulk Cargo (not containerized in tank cars, vehicles, or containers)
- Boats over 40 feet in length
- Oversize/Overweight Cargo (single shipment quantity in excess of 50,000 pounds or 30 measurement tons)

5.4 Government Obligation

5.4.1 Commitment of Cargo

Unless the Government elects to employ Carrier services beyond the Port of Praia, for the purposes of this Contract the CONUS origin/destination points/ports shall be limited to the CONUS points indicated in THE CARE-SM II System. The Government, at its option, will determine if cargo will move between other CONUS points and the Port of Praia, Azores under this Contract or under separate Contractual arrangements, or between the Port of Praia, Azores, and OCONUS points indicated in the CARE-SM II System upon Government election to employ Carrier service beyond the Port of Praia. During the period of this Contract and subject to provisions set forth below and in Section 5.4, unless the Government elects to employ Carrier services beyond the Port of Praia, the Government will ship with the Carrier sustainment cargo offered for ocean transportation in the Defense Transportation System (DTS) between points and ports in CONUS and Port of Praia, Azores. In the event the space made available by the Carrier is insufficient to meet the requirements of the Government, the Contracting Officer reserves the right to make other arrangements to meet such requirements.

5.4.2 Volume of Cargo

A minimum volume of cargo per round trip voyage is guaranteed under this Contract. The Government shall guarantee 57 forty foot equivalent units (FEUs) per round trip voyage based on a quarterly aggregate sequential voyage average (ASVA). For calculation purposes, a round trip voyage shall include all of the cargo tendered by the Government for an outbound sailing from CONUS to Port of Praia Azores and the following inbound sailing from Port of Praia Azores to CONUS. The Government shall sum the total number of all containers tendered by the Government for each round trip voyage using a conversion of one FEU per 40' container and one half FEU per 20' container. Breakbulk cargo shall be added to that total by converting the manifest measure of all such cargo using a conversion of one FEU per 41 measurement tons of cargo tendered. Vehicles shall be added to that total by converting the manifest measure of all such cargo using a conversion of one FEU per 21 measurement tons of cargo. The ASVA shall then be determined for every 12 months of the Contract by dividing the total cargo tendered

by the Government for all of the round trip voyages completed during the respective 12 months period of the Contract by the number of the voyages. That ASVA of FEUs shall determine payments, if any, that are payable as minimums. The ASVA shall be based solely on the minimum sailings in accordance with Section 2.1.1. Any cargo carried on additional sailings during the year shall be added to the aggregate cargo of the nearest required minimum sailing completed during the year. Additional sailings will not be included for the purpose of averaging the ASVA. Such payments shall be made in accordance with Attachment 3. The cargo volumes listed at Attachment 6 are provided for information purposes only and in no way represent a commitment on the part of the Government other than that which is stated herein. The one- year firm Contract period will be considered independently of each other for the purposes of calculating the ASVA. The maximum volume of cargo under this contract shall not exceed the total capacity of the Carrier's vessel(s) utilized for all voyages required under Section 2.1.1. The Government does not guarantee the completeness or accuracy of the projection.

5.5 Limitations Of Carrier's Obligation

5.5.1 Explosives

Explosives, other than small arms ammunition, are excluded from the scope of this Contract and shall not be carried hereunder.

5.6 Improper Documentation

If the Government does not provide the Carrier with the correct container documentation at the time and location of Carrier acceptance, the Carrier may refuse to accept the container. If the Carrier chooses to pick-up or accept the container, the Carrier shall provide the cognizant MTMC manifesting activity with all the missing receipt or lift data in order that the container can be completely identified for onward movement. This information shall be provided within one (1) working day of receipt or lift, or earlier if necessary to meet the scheduled vessel sailing.

5.7 Failure To Spot

5.7.1 Remedies

When the Carrier fails to spot an empty container by the designated date and time, and as a result there is not reasonable time to allow stuffing and release of the container in sufficient and reasonable time to meet the scheduled sailing date of the vessel to which the container is booked, the Carrier shall be liable either for the payment of liquidated damages or for the reimbursement of expenses incurred by the Government to obtain alternate transportation of the container. The Government shall also be entitled to cancel the booking of such cargo.

5.7.2 Liquidated Damages

Liquidated damages shall be equal to the detention charges set forth in Section 5.21.2 for each 24-hour period, or pro-rata portion thereof, from the time of completion of loading of the vessel to which the container was originally booked to the time of commencement of loading of the Carrier's next scheduled vessel to the port of destination to which the container was booked. If the Government cancels the booking, the Carrier's liability for liquidated damages shall be limited to the period ending with cancellation.

5.7.3 Alternate Transportation

If the Government elects to employ alternate intermodal transportation to move the container to another port, the Carrier shall be liable for any expenses or costs incurred by the Government above the expenses that normally would have been incurred had the container been furnished by the designated time and date.

5.7.4 Government Responsibility for Failure

Neither liquidated damages nor charges for Government expenses will be assessed if the Carrier can establish: 1) that the inability to spot the container as agreed is the result of the Government's failure to un-stuff and release an empty container to the Carrier within a reasonable time to meet the required spotting date; 2) that it advised the ACO of such inability at least seven days prior to the required spotting date; and 3) that the Carrier only accepted bookings which could reasonably be expected to be fulfilled.

5.8 Delay In Spotting

When the Carrier fails to spot an empty container by the designated date and time, and as a result the Government incurs overtime expenses to enable stuffing and release of the container by the Government prior to the scheduled sailing date of the vessel, the Carrier shall be liable for payment of liquidated damages equal to the total overtime expense incurred by the Government.

5.9 Overweight Containers

5.9.1 Notification

At the time of booking, the Carrier shall notify the OO if the maximum cargo weight which can be loaded into a container which is to be stuffed by the Government is less than the standard maximum cargo weight capacity for the container, and the reason therefore. Containers on which such restrictions are imposed shall not be utilized under this Contract if acceptable containers are available for the required service from any other Carrier, which does not impose a restriction.

5.9.2 Cost Liabilities

If the Government stuffs a container with cargo weighing in excess of the container's standard maximum weight carrying capacity or in excess of any lesser weight of which it has been given notice under Section 5.9.1, it shall remove, or pay the expense of removing the excess of cargo, reimburse any fines or penalties exacted of the Carrier in moving or handling the excess weight of cargo. All fees or other costs incident to weighing containers shall be the responsibility of the Carrier.

5.9.3 Carriage of Overweight Containers

The Carrier shall not refuse to carry a container between a CONUS port and Azores that weighs in excess of the local maximum weight allowed by U.S. Federal, state, or local governments if the container can be discharged from the vessel and the excess weight of cargo can be removed without violation of the applicable law, regulation, or ruling that established the maximum weight.

5.10 Government Failure To Timely Release Containers

5.10.1 Occurrence

When a container which has been positioned at a Government stuffing facility is not released by the Government within a reasonable time to meet the scheduled sailing time and date of the Carrier's vessel to which it is booked, thereby precluding the container from being loaded on the vessel, the Government shall have the alternatives set forth below. In no event will the Government be liable for vessel demurrage or dead freight as a result of failure to release a container in time to meet a specified vessel sailing.

5.10.2 Load on the Next Vessel

The Government may allow the Carrier to load the container on the next vessel scheduled to the booked port of debarkation and pay the Carrier detention charges set forth in Section 5.21.2 from the time of completion of loading of the vessel to which the container was originally booked to the time of the commencement of loading of the Carrier's next scheduled vessel to Azores.

5.10.3 Un-stuff the Container

The Government may order the Carrier to move the container to another place for un-stuffing. The Government shall bear all costs of such movement and shall pay detention charges set forth in Section 5.21.2 between the time of completion of loading of the vessel to which the container was booked and the release of the empty container.

5.11 Carrier Failure To Load Containers

5.11.1 Occurrence

When a stuffed container is released by the Government within reasonable time to meet the scheduled sailing time and date of the Carrier's vessel to which it is booked and the container is delayed, or there is a delay in sailing as scheduled, in excess of 48 hours, through the fault of the Carrier, precluding the container from being loaded on the vessel, the Government shall have the remedies set forth below.

5.11.2 Load on the Next Vessel

The Government may order the Carrier to load the container on the next vessel scheduled to the same port of debarkation and hold the Carrier liable for liquidated damages equal to detention charges from time of completion of loading of the vessel to which the container was originally booked to the time of completion of loading of the Carrier's next scheduled vessel to Azores.

5.11.3 Move to Another Shipping Place

The Government may take possession of the container and transport it by any means available to the Government. The Government shall return the container to the Carrier at the port of debarkation. The Carrier shall be liable for liquidated damages equal to detention charges commencing at the time of completion of loading of the vessel to which the container was originally booked and ending when the vessel on which the container is loaded sails. The Carrier shall also be liable for freight, and any other expenses, paid by the Government for movement of the container over that freight which would have been paid to the Carrier if it had been loaded as originally booked.

5.11.4 Return the Cargo

The Government may elect to return the cargo, in which case the Carrier shall move the container to a place designated by the OO for un-stuffing and the Carrier shall bear all costs for such movement and un-stuffing. The Government shall not be obligated to pay for use of the container. The Carrier shall be liable for liquidated damages in an amount equal to detention charges, commencing at the time of completion of loading of the vessel to which the container was originally booked and ending when the OO Officer notifies the Carrier of this course of action.

5.12 No Fault Failure To Meet Sailing

5.12.1 Occurrence

If a container stuffed with cargo misses the sailing for which it is scheduled due to no fault of the Government or the Carrier, the Government shall have the remedies set forth below.

5.12.2 Load on the Next Vessel

The Government may order the Carrier to load the container on the next vessel scheduled to the same port of debarkation. The Government shall pay only for freight and usual charges.

5.12.3 Move to Another Shipping Place

The Government may order the Carrier to move the container to another place, including another Carrier's terminal. The Government shall bear all costs for such movement, and shall return the container to the Carrier at the port of debarkation.

5.12.4 Return the Cargo

If the Government elects to order the return of the cargo, the Carrier shall move the container to a place designated by the ACO for un-stuffing. The Government shall bear all costs of such movement.

5.13 Delay Of Scheduled Sailing

5.13.1 Occurrence

If the scheduled sailing to which container cargo is booked is delayed, through no fault or failure of the Carrier, more than 96 hours (48 hours for container stuffed with refrigerated or perishable cargo) beyond either the departure time scheduled when the container was ordered, or the time the stuffed container arrived at the Carrier's terminal, whichever is later, the Government shall have the alternatives set forth below.

5.13.2 Container Release

The Government may allow the container to move on the delayed sailing.

5.13.3 Move to Another Shipping Place

The Government may order the Carrier to move the container to another place, including another Carrier's terminal. The Government will bear all costs for such movement, including removal of the container from the vessel and placement on a chassis. The Government shall return the container to the Carrier at the port of debarkation.

5.13.4 Return the Cargo

If the Government elects to order the return of the cargo, the Carrier shall move the container to another place designated by the ACO for un-stuffing. The Government shall bear all costs of such movement, including removal of the container from the vessel.

5.14 Storage Charges

When the Carrier fails to pick-up a container from the Government facility within the time period specified in Section 3.3.2, the Carrier shall be liable for payment of storage charges computed at the detention rates for each 24-hour period, or pro-rata portion thereof, from expiration of the time described in Section 3.3.2.

5.15 Commencement And Time Standard Of Delivery Transportation

When the Carrier fails to commence or meet the time standard of inland delivery transportation within the specified time period, the Carrier shall be liable for payment of liquidated damages, computed at the rates for detention charges for each 24-hour period, or pro-rata portion thereof, in excess of the time period specified in Section 2, excluding time lost due to delay in commencing delivery pursuant to a request by the ACO, labor disturbances, or fault or failure of the Government.

5.16 Transshipment Or Relay

5.16.1 Policy

The Carrier shall not transship or relay cargo, containerized or breakbulk, unless it has received written permission to do so from the ACO at the time of booking. The Carrier's request for permission shall include notice of the extent to which it will transship or relay the container between vessels (whether its own or other Carriers') and of the flag of the vessels involved. Transshipped or relayed containers shall be loaded aboard the first available vessel sailing from the port of transshipment or relay. The Carrier shall immediately notify the MTMC representatives at the ports of loading, transshipment or relay, and destination of the name of the vessel and/or Carrier and estimate time of arrival at destination.

5.16.2 Foreign Flag Vessels

No foreign flag vessel shall be used for any portion of the carriage between the ports of loading and discharge unless the use of such vessel has been disclosed to and approved by the Director of JTMO or his/her designee prior to booking, or unless delivery to the port of discharge on the U.S. flag vessel scheduled to carry the container to the port is prevented by a casualty to the vessel that precludes its call at the port of discharge within a reasonable time and the Director of JTMO or his/her designee has approved transshipment to the foreign flag vessel. No freight shall be due for any transportation wholly or partially on a foreign flag vessel in violation of this paragraph.

5.16.3 Notification of Arrival

When delivery of cargo is made by a transshipment or relay vessel, the Carrier shall notify the COR of the impending arrival of the cargo at the port of final destination, and shall include in such notification, the name, estimated time of arrival, and flag or registry of the ship in which it shall arrive; the Carrier's name, the ship and voyage document number to which the cargo was originally manifested; the container number, if applicable; and the names and flags of registry of any ship utilized for intermediate transshipment or relay.

5.17 Diversion For The Convenience Of The Government

Upon written direction by the Contracting Officer, the Carrier shall route or divert its vessel, for the convenience of the Government, to a port of loading or discharging not on the route for which rates are quoted in the CARE-SM II System. The written direction shall reflect the special routing or diversion and state the agreed additional freight, if any, to be paid by the Government for such special routing or diversion.

5.18 Transfer Of Containerized Cargo

The Carrier shall not transfer or transload cargo from one container to another without the authorization of the ACO, except when such transfer is required to safeguard the cargo during the continuation of the movement. When cargo is transferred from the original container, the Carrier shall immediately so notify the MTMC activities having cognizance over the loading and discharge ports. Such notice shall contain the serial number and seal number of the original container, and of the container to which cargo was transferred, the place where the transfer occurred and the reason for the transfer. When the container to which the cargo was transferred differs in internal cubic capacity from the original container, freight shall be based upon the cubic capacity of the original container.

5.19 Government Drayage/Line-Haul

If the booking terms require delivery of the container to the Government at the Carrier's terminal at the port of discharge, the Carrier's obligation under this Contract shall terminate at the time the container with chassis is hooked to the Government tractor or at 0001 hours after the container has been discharged from the vessel, placed on a chassis, cleared for line-haul or drayage by all applicable agencies of the local Government, including Customs, and the ACO has been notified that the container is ready for line-haul or drayage, whichever occurs first.

5.20 Time

5.20.1 Free Time Allowed

The total amount of free time in CONUS will be ten (10) days. At Port of Praia, total free time shall be the time between delivery of a container and arrival of the Carrier's next vessel.

5.20.2 Commencement of Free Time

Time shall commence to run at 0001 hours local time after the container is physically tendered for delivery.

5.20.3 Running of Time

Time shall not run during any Saturday, Sunday, or locally observed holiday at the place the container is located. Time shall run during any period when clearance by local government agencies is delayed due to the non-availability of documents required for such clearances which are furnished by the Government, provided, that the container is otherwise ready for line-haul/drayage and the ACO has been notified of the unavailability of such documents. When such delay is requested by the Government, time shall, run during the period of delay prior to commencement of inland delivery.

5.20.4 No Running of Time

Time shall not run during any period containers are held due to local labor disturbances.

5.20.5 Cessation of Time

Time shall cease to run at 2400 hours on the day the Carrier is notified that the container is released or when the container is returned to the Carrier, whichever is earlier.

5.21 Detention

5.21.1 Incurrence

In the event the Government holds the Carrier's container longer than the free time allowed, the Government shall pay detention charges as set forth below.

5.21.2 Computation of Detention

Detention charges will be paid at the rates set forth below for each 24 hour period of time, or pro-rata portion thereof, beyond the total allowed free time that the containers are held by the Government. No detention charge will be incurred for time spent in stuffing containers. Rates are expressed in dollars and cents and apply for containers with or without chassis.

CONTAINER DETENTION CHARGES

A. **DRY CARGO CONTAINER:** (Includes closed containers, open top containers, flat racks, car carriers, any of the above with chassis, and chassis alone)

Under 40 FT	\$11.00
40 FT and Over	\$15.00

B. REFRIGERATED CONTAINER: (Includes container with chassis)

Under 40 FT	\$30.00
40 FT and Over	\$41.00

5.21.3 Refrigerated Containers

When Government caused delay of a refrigerated container results in payment of detention, the Carrier shall be reimbursed for fuel consumed during the detention period. The compensation payable by the Government will be at the Carrier's actual cost including labor and materials.

5.21.4 Detention Invoices

Detention invoices shall be submitted to the ACO's representative designated to Certify such invoices no later than six (6) months from the date the empty container is returned to the Carrier. Detention invoices received after that time will not be certified for payment and the Carrier waives any right to payment thereafter.

5.22 Use Of Government Terminals**5.22.1 Services**

When the Carrier calls to load or discharge containers or breakbulk cargo at government facilities, if requested by the Carrier, the Government shall make available such services and materials as may be required to permit the Carrier to perform with dispatch its responsibilities under this Contract in connection with the loading or discharging of cargo. The Government shall provide necessary husbanding services to the vessel while it is at the facilities. The Carrier shall pay the Government, represented by the agency operating the facilities, for such services or materials in accordance with schedules established by that agency.

5.22.2 Stevedoring

Unless the Government elects to employ Carrier services beyond the Port of Praia, Azores, the Government will arrange for stevedoring services to be performed at its expense. Stevedoring shall include use of ship's gear to discharge and load cargo from/to lighters. Such stevedoring shall be prosecuted with reasonable dispatch in accordance with the established Custom of the Port on a straight time basis. All stevedoring in the Azores shall be governed by the terminal tariff in effect. (Copies are available from the Contracting Officer upon request.)

5.23 Shifting Docks

Within a vessel's port of call, the COR may require the vessel to call at, or shift to a particular dock wharf, place or open roadstead at which the vessel can lie always safely afloat at any time of tide, or at which, in the judgment of the Master, the vessel may lie safely aground, and to and from which the vessel may safely proceed when the aggregate of the cargo to be loaded or of the cargo to be discharged at such location is 300 measurement tons or more. If the COR orders such a call or shift and less than 300 measurement tons of cargo are loaded or discharged, the direct costs of such shift shall be reimbursed by the Government. Nothing herein shall be construed as a warranty by the Government of berth, or approaches thereto, at facilities owned or operated by or for the Carrier or at other commercial facilities normally utilized by ships of the size as the Carrier's vessel to load and discharge cargo.

5.24 Custom Of The Trade

Wherever the standard of performance by either party is not provided under the provisions of this Contract, the "Custom of the Trade" shall be used as a standard of performance. This phrase shall mean the established practice

generally accepted by the trucking, rail and marine shipping industries providing transportation services in the geographic trade covered by this Contract.

5.25 Security

If the Government notifies the Carrier that the employment or the continued employment of the Master or any member of the crew is prejudicial to the interests or endangers the security of the United States of America, the Carrier shall make any changes necessary in the appointment(s). Any costs to the Carrier occasioned by such changes shall be reimbursed by the Government.

5.26 Safety In Loading And Discharging Of Cargo

The Carrier shall comply with all applicable provisions of Public Law 91-596, 84 Stat. 1590 (approved December 29, 1970) known as the Occupational Safety and Health Act of 1970 (29 USC 655, ex. seq.) and with the standards promulgated there under by the Secretary of Labor for Safety in loading and discharging of cargo.

5.27 Substitution

If the Carrier wishes to materially change its service or to substitute another vessel or other equipment for the vessel or equipment initially offered for service, the Carrier shall submit to the Contracting Officer within 45 calendar days of the anticipated change a written request detailing such change and the impact on the service provided. The Carrier shall not implement such a change without the written consent of the Contracting Officer.

6.0 Special Contract Provisions:

6.1 Regulatory Compliance

The carrier must comply with regulations of the Federal Maritime Commission and the Service Transportation Board, Department of Transportation and/or other governmental organizations, including local regulations at origin, destination and in-transit as may be applicable for service to the Government in carriage of cargo as set forth in this solicitation.

6.2 Bunker Adjustment Factor (BAF)

a. An allowance for fluctuations in marine fuel prices shall be paid to the carrier in accordance with the following:

(1) Offerors shall provide a fuel consumption standard for the vessel(s) offered in service. Per barrel consumption at steaming by bunker type (e.g., HFO, MDO) and barrels consumed per hour at berth shall be provided. An average price per barrel will be computed over the base period of seven weeks preceding the date set for initial proposals. This base price will be computed for Norfolk. The source of price information is the Bunkerdesk based on the bunker type used by vessel as provided. These prices are quoted in dollars per metric ton. They will be converted to barrels by dividing by the appropriate conversion factor: 6.55 for Bunker C, 6.61 for IFO 180 and 7.628 for Marine Gas Oil and Marine Diesel. Upon award of the contract a modification will be issued establishing the baseline price.

(2) No later than thirty (30) calendar days after the conclusion of the base one-year contract period, and for any subsequent one-year option period, the Carrier shall submit to the ACO a certified statement by voyage of total fuel consumption for the voyages accomplished during the one-year contract period. For each voyage, the certification shall contain the following information: Ship name, sailing dates, POD and POE, carrier voyage number and route index, DTS voyage number.

(a) Average round trip steaming mileage will be divided by nautical miles per barrel fuel consumption factor provided in the carriers offer to yield barrels consumed per voyage. The ACO shall determine a factor for an average number of hours at berth. This factor shall be divided by hours per barrel

at berth provided in the carriers offer to yield barrels consumed at berth. Barrels consumed (steaming and at berth) for all voyages will be totaled for the annual period.

(b) A new average annual fuel price, a dollar differential, and a percent differential will be computed by the ACO for the one-year base period of the contract in the same manner as the base period per paragraph (1), above. The dollar differential is the new average fuel price minus the base price. Dividing the dollar differential by the base price derives the percentage differential. If the percent differential is greater than 20%, a payment or deduction will be made. If an increase in cost results in payment to the carrier, such payment will be a lump sum. If a decrease in cost results in benefit to the Government, the Government shall set off sums against monies owed the carrier. The dollar payment/set off shall be determined by application of the annual computed dollar differential, less 20%, times the total annual fuel consumption (in barrels) for the relevant contract period.

b. The fuel allowance applies to carrier purchases of fuel from normal commercial suppliers and does not apply when fuel has been provided or subsidized by the U. S. Government or foreign Governments.

7.0 Maritime Clause.

7.1 Application of COGSA.

The United States Carriage of Goods by Sea Act (COGSA) 46 U.S.C. 1300-1.315 is incorporated into this solicitation and shall apply to the ocean transportation of all goods (including goods in containers stowed on deck, which shall be considered as goods stowed under deck) under any Shipping Order with the same force and effect as if the Act applied to such carriage by express provision therein; except that as to deck cargo the Government shall bear the risk of perils inherent in deck carriage provided, however, in case of loss, damage or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to the period within which notice thereof shall be given the contractor or as to the period within which claim, therefore, shall be made or suit instituted. For the purpose of interpreting Section 4 of the Act "Limitation of Liability" a container shall be considered one package only for bulk cargo. For all other cargo the limitation of liability set out in Section 4 of the Act shall apply to each package, and for cargo not in packages to each measurement ton of cargo, within the container. The carriage of cargo under any Shipping Order issued pursuant to this solicitation shall not be deemed or construed to be the carriage of cargo pursuant to special terms and conditions as provided for in Section 6 of the Act; and nothing in this solicitation is intended to relieve the contractor or the vessel from liability for loss or damage to or in connection with the goods arising from negligence, fault or failure in the duties and obligations provided by the Act or to lessen such liability otherwise than as provided therein. The contractor shall be liable as a common Carrier by land for any loss of or damage to cargo while being transported under this solicitation between any inland origin and the vessel's side and between the vessel's side and any inland destination.

7.2 Scope of Voyage (Liberties).

In any situation, whatsoever or wheresoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the contractor or master of the vessel is likely to give rise to capture, seizure, detention, damage, delay or disadvantage to or loss of the vessel or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to begin or continue the voyage or to enter or discharge the goods at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the master, whether or not proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the Government's goods may, upon notification to and with the consent of the Contracting Officer, discharge the goods into another port, depot, lazarette, craft, or other place, or retain the goods on board until the return trip or until such other time as is deemed mutually advisable. This notice shall include, but not be limited to, the planned port of discharge of the cargo and any measures planned to protect the cargo. If the Contracting Officer determines that the planned disposition of the cargo is not in the Government's best interest, the contractor shall comply with the PCO's direction to the contractor to divert the cargo to a port of the Government's choice and to

make any other arrangements for the cargo the PCO deems necessary to protect the Government's interest. The contractor may be entitled to an equitable adjustment to the Contract for actions taken pursuant to the PCO's direction. However, for any services rendered without prior notice to and consent of the Contracting Officer, the contractor shall not be entitled to an equitable adjustment. In no such case shall freights be payable until the goods are delivered to the named destination on the Shipping Order. In any event, the contractor shall at all times be responsible to assure the security and protection of the cargo until relieved of such responsibility by the Government or its designated agent.

The contractor, the master and the vessel shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the Government of any nation or department thereof or any person acting or purporting to act with the authority of such Government or of any department thereof, (or by any committee or person having, under the terms of the war risk insurance on the vessel, the right to give such orders or directions). Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The vessel may carry seized contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

7.3 Force Majeure.

The act of God, enemies, fire, restraint of princes, rulers of people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Contract are mutually excepted. The vessel shall have the liberty to deviate for the purpose of saving life and property, to tow or to be towed, to sail with or without pilots, or to go into dry dock or into ways with or without cargo on board. However, in no case shall the contractor be entitled to extra compensation for such a deviation and the contractor shall not be relieved of responsibility for delivery of cargo to the destination named in the Shipping Order.

7.4 Strikes.

7.4.1 Loading Port

In the event the vessel or the loading of the vessel is delayed by reason of strikes or stoppage of work, the contractor may, at the loading port dispatch the vessel with such portion of the cargo as may then be on board.

7.4.2 Discharge Port

In the event the vessel or discharge of the vessel is delayed by reason of strikes or stoppage of work, the contractor at the discharge port may discharge the cargo still on board or with the approval of the Government dispose of the cargo or any part of it at the Government's risk and expense.

7.5 Amended Jason Clause.

In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the contractor is not responsible, by statute, contract, or otherwise, the goods, Shippers, consignees, or owners of the goods shall contribute with the contractor in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salvaging vessel is owned or operated by the contractor, salvage shall be paid for as fully as if such salvaging vessel or vessels belonged to strangers.

7.6 General Average:

General average shall be adjusted, stated and settled, according to York-Antwerp Rules 1974 as amended 1990, at such port or place in the United States as may be selected by the contractor, and as to matters not provided for by those Rules, according to the laws and usages at the Port of New York. In such adjustment, disbursements in

foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship.

7.7 Liens

7.7.1 Seizure of Cargo

The contractor agrees that it will not assert any type of lien, including a maritime lien, on any cargo shipped by the Government under this Contract. The contractor further agrees that it will not take any action to seize, arrest, hold, or otherwise detain such cargo through any judicial process in the U.S. or any foreign country. The contractor agrees to insert this clause in all subcontracts at any level and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

7.7.2 Freight

There shall be no liens, including maritime liens, asserted on any freights payable by the Government under this contract. The Contractor agrees to insert this clause in all subcontracts at any level and to expend any resources necessary to expeditiously enforce the provisions of this clause against such subcontractors.

8.0 War Risk

8.1 Compensation.

In the event it is necessary for the vessel's owners to pay premiums to extend the coverage of crew, hull and machinery, protection and indemnity insurance and insurance covering the loss and damage of cargo while aboard the vessel to include war risks in excess of premiums on such war risk coverage on the date the contractor's rates were submitted under this Agreement, or to pay crew war risk bonuses as a result of the vessel entering the war risk area, the Government shall reimburse the contractor at the appropriate rate filed on carrier's commercial tariff.

If Commercial Marine, War Risk, and Liability Insurance is not available or if Marine, War Risk, and Liability Insurance through the Secretary of Transportation under Sections 1202-1205 of the Merchant Marine Act of 1936, 46 App. U.S.C. 1282-1285, is available at a lesser rate, the Procuring Contracting Officer (PCO) reserves the right to require contractors to obtain the necessary Marine, War Risk, and Liability Insurance from the Secretary of Transportation. Further, in the event that the Secretary of Defense, or his/her authorized designee, is authorized to provide and does provide indemnification to the Secretary of Transportation under Section 1205 of the Merchant Marine Act, 1936, 46 App. U.S.C. 1285, for Marine, War Risk, and Liability coverage without premium, the Contracting Officer reserves the right to require the contractor to obtain such insurance from the Department of Transportation and no premiums as set forth in Paragraph (1) above will be paid to the contractor by the Government.

8.2 Limitation of Government Liability.

No payments shall be due from the Government under this Section unless and until the contractor shall also assess such charges against commercial cargo loaded or discharged in the war risk area. The contractor agrees to add the United States Government as an additional assured on its War Risk Policy with waiver of subrogation noted, for which the Government has agreed to reimburse the extra premium under this Section.

9.0 Damage to Equipment

Should a container, chassis, or any other piece of Carrier equipment be damaged by act of the Government, its agents, employees, or Contractors while such Carrier equipment is in the custody of the Government, its agents, employees or Contractors, the Government shall repair or reimburse the Carrier the least of the following: the

reasonable costs of repairs; the fair market value immediately prior to the damage; or the depreciated value on the Carrier's books. The Carrier will assign to the Government any rights, causes of action, or other claims which the Carrier may have against third parties with respect to such damage. The Government shall not be liable for the repair of any damage under this Section unless written notice specifying such damage shall have been given to and acknowledged by the Government or its authorized representative at the time custody of the container or other equipment is returned to the Carrier. Claims submitted under this Section and Section 6.6.2 below shall be filed with the Military Traffic Management Command, Staff Judge Advocate, Room 12N67, Alexandria, VA 22332-5000.

9.1 Damage to Carrier Vessel or Vessel Equipment.

Should the vessel or its equipment be damaged by act, neglect or failure of equipment of the Government, its agents, employees, or Contractors in loading or discharging the vessel, the Government shall reimburse the Carrier the reasonable costs of repairs and the Carrier will assign to the Government any rights, causes of action, or other claims which the Carrier may have against third parties with respect to such repairs. In the event that any damage should occur to the vessel or its equipment as a result of the joint fault of the Carrier and the Government, payment for such damage shall be apportioned pro rata in accordance with the respective degrees of fault. The Government shall not be liable for the repair of any damage under this Section unless notice specifying such damage and the name(s) of the party or parties causing such damage shall have been given to and acknowledged by the Government or its authorized representative as soon as possible after the occurrence of such damage, or in any event before the vessel leaves the berth or anchorage where the damage occurred, and provided, further, that the Government shall not be liable for the repair of any damage under this Section if such damage is caused by a Contractor of the Government unless demand first is made upon such Contractor by the Carrier and payment therefor has been refused.

9.2 Damage to Government Equipment.

The Carrier shall be liable for loss of or damage to Government containers and chassis while in the Carrier's custody to the same extent that the Government is liable for loss of or damage to the Carrier equipment while in the Government's custody. The Carrier will not procure insurance coverage on Government containers and will not be liable for any loss thereof under circumstances covered by the Carrier's war risk insurance on its own containers. Should a container, chassis, tractor, or any other piece of contractor equipment, excluding the vessel, be damaged or lost by act, neglect or failure of equipment of the Government, its agents, employees or contractors (other than the prime contractor) while such contractor equipment is in the custody of the Government, its agents, employees or contractors (other than the prime contractor), the Government shall repair or reimburse the contractor the least of the following: the reasonable costs of repairs or the fair market value of the container immediately prior to the loss or damage. The contractor will assign to the Government any rights, causes of action, or other claims which the contractor may have against third parties with respect to such damage. The Government shall not be liable for the repair of any damage under this Section unless written notice specifying such damage shall have been given to and acknowledged by the Government or its authorized representative at the time custody of the container or other equipment is returned by the Government to the contractor.

9.3 Lost Carrier equipment

Carrier equipment shall be considered lost when theft or disappearance is certified as such by the Ordering Officer (OO)/Contracting Officer's Representative (COR) or its representative and upon concurrence by the Contracting Officer. No pre-determined time frame shall govern when equipment must be declared lost under this Contract. Once a piece of contractor equipment is certified as being lost, any per diem or detention or liquidated damage charges accruing for account of either the contractor or the Government shall cease, effective with the date specified in the certification. Accrued charges after the date of certification shall be canceled and not considered part of the reimbursement to the contractor.

10.0 Shipments by Authorized Agents of the Government.

The following provisions apply only for authorized agents' shipments:

10.1 Parties to the contract.

Parties, on the first part, include the US Government and its agents and authorized contractors other than the Carrier under this contract, including Code 3 Military Household Goods (MHHG) ITGBL Carriers or Global POV Contract Carriers (hereinafter called "the Shipper", and, on the second part, the ocean Carrier.

10.2 Booking of cargo.

Shipments booked by authorized agents will be booked in accordance with the VISA priorities outlined under this contract subject to the terms and conditions of the agent's respective Government contracts. For such shipments offered on a port to port basis by the authorized agent, the Shipper agrees to offer cargo for booking upon no less than 3 working days notice prior to a base port departure date unless a later time is agreed upon by the parties for a particular shipment or group of shipments. The Carrier shall have a maximum of 24 hours to accept an offering of cargo and notify the Shipper of such acceptance.

10.2.1 Shipping order

For shipments booked by authorized agents, the Shipper will prepare a shipping order substantially in the form attached hereto as clearance order/shipping order (JTMO Form 4612/1), Attachment A. The shipping order shall be evidence of ownership and will constitute the contract of carriage issued to the ocean Carrier.

10.2.2 Carrier Load Port.

For authorized agent shipments, cargo/container receipt and lift information shall be furnished by the ocean Carrier to the authorized agent who ordered the transportation services stating the Shipping Order number rather than the TCN as used with other DTS shipments (on board ocean bill of lading acceptable). Cargo/container receipt information required at CONUS and designated overseas ports of loading shall be provided within four hours after the cargo or container is received. Cargo/container lift information shall be provided within eight hours after vessel departure from CONUS/overseas port. This information shall be provided by a mutually agreeable means between the Shipper and the Carrier and shall indicate as much of the following data for each shipment of cargo or each container received/loaded as is available within that time:

1. Cargo/container Receipt Information (CONUS and Designated Overseas Ports of Loading)

- (a) Name of ocean Carrier
- (b) Port of loading
- (c) Date container received at port
- (d) Carrier's container number with ALFA prefix
- (e) Transportation Control Number (TCN)
- (f) Seal and/or keyless lock number

2. Cargo/container Lift Information (CONUS/Overseas Ports of Loading)

- (a) Name of vessel and voyage document number

- (b) Carrier's container number with ALFA prefix
- (c) Transportation Control Number (TCN)
- (d) Port of discharge
- (e) Final destination
- (f) General description of container contents, i.e., General Cargo - Mail/Mail Equipment - Privately Owned Vehicles (POV'S) - other Unboxed Wheeled or Tracked Vehicles - Refrigerated Cargo
- (g) Seal and/or keyless lock number - Note: The Carrier is to notify the ACO if a seal on any unit of cargo or container has been broken and/or replaced between the time the Carrier accepted the loaded container from the Government and the time of arrival at inland destination or point of Government acceptance from the Carrier with a complete report as to the circumstances and the reasons therefore.

10.2.3 Carrier Discharge Port.

For authorized agent shipments, cargo or container discharge information shall be furnished to the authorized agent consignee listed on the Shipping Order stating the Shipping Order number (arrival notice or similar acceptable with discharge noted). This information, which shall be provided for each unit of cargo or each container discharged as soon as practicable after discharge, but not later than one day following the commencement of delivery, shall include the following:

1. Name and voyage number of vessel being discharged
2. Name and voyage number of original vessel sailing if transshipped
3. Date and time the cargo or container was discharged from the vessel
4. Date, time, and mode of commencement of delivery from discharge port to and consignee.
5. Weekly lift and authorized agent shipment statistics:

The Carrier agrees to provide weekly volume information to the Chief, MTMC CONUS Command Booking Office, Ft. Eustis, VA, the COR for all shipments under this contract, with authorized agent statistics specifically segregated from overall lift statistics. Information shall include, but is not limited to, the number of containers by origin or destination, direction and size of equipment. Reports will be provided by fax to 757-878-1810 until such time as MTMC develops an internet based capability for Carriers to submit these reports when report via the internet will be required. Carriers will be notified when internet capability becomes effective.

10.2.4 Payment

The authorized agent shall make payment directly to the ocean Carrier thirty days after receipt of an invoice or evidence of completion of services ordered under this agreement. The Carrier will provide written verification of delivery to the ordering activity.

10.2.5 Detention invoices

The authorized agent ordering services from the ocean Carrier is responsible for certification and payment of all detention charges applicable under this contract.

11.0 ALTERNATE DISPUTE RESOLUTION PROCEDURES (ADR)

BACKGROUND: Pub. L. 101-552, the Alternate Dispute Resolution Act encourages the use of alternative means of resolving disputes involving Government agencies. The Act is based on Congress' finding that alternative processes, including mediation, often "yield decisions that are faster, less expensive and less contentious and can lead to more creative, efficient and sensible outcomes."

PARTNERING: To most effectively accomplish this contract and resolve potential disputes, the MTMC Contracting Office proposes to form a cohesive partnership with the Contractor. Partnering lays the foundation for better working relations on a project including better dispute resolution. This partnership would strive to draw on the strengths of each organization in an effort to achieve a quality project done right the first time, within budget and on schedule. This partnering would be bilateral in make-up and participation will be totally voluntary. Any cost associated with effectuating this partnership will be agreed to by both parties and will be shared equally with no change in contract price. All partnering procedures shall be conducted IAW applicable ADR laws and regulations.

CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	DEC 2001
52.203-3	Gratuities	APR 1984
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.204-4	Printed or Copied Double-Sided on Recycled Paper	AUG 2000
52.204-6	Data Universal Numbering System (DUNS) Number	JUN 1999
52.212-5	Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items	MAY 2002
52.212-5 Alt I	Contract Terms and Conditions Required to Implement Statutes or Executive Orders--Commercial Items (May 2002) Alternate I	FEB 2000
52.216-27	Single or Multiple Awards	OCT 1995
52.217-5	Evaluation Of Options	JUL 1990
52.219-16	Liquidated Damages-Subcontracting Plan	JAN 1999
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.227-1	Authorization and Consent	JUL 1995
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration	MAY 1999
52.233-3	Protest After Award	AUG 1996
52.237-3	Continuity Of Services	JAN 1991
52.242-13	Bankruptcy	JUL 1995
52.242-15	Stop-Work Order	AUG 1989
52.242-17	Government Delay Of Work	APR 1984
52.245-1	Property Records	APR 1984
252.201-7000	Contracting Officer's Representative	DEC 1991
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	MAR 1999
252.203-7002	Display Of DOD Hotline Poster	DEC 1991

252.204-7000	Disclosure Of Information	DEC 1991
252.204-7001	Commercial And Government Entity (CAGE) Code Reporting	AUG 1999
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Required Central Contractor Registration	NOV 2001
252.212-7000	Offeror Representations and Certifications- Commercial Items	NOV 1995
252.212-7001	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items	MAY 2002
252.212-7001 (Dev)	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Deviation)	APR 2001
252.223-7002	Safety Precautions For Ammunition And Explosives	MAY 1994
252.223-7003	Changes In Place Of Performance--Ammunition And Explosives	DEC 1991
252.223-7006	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials	APR 1993
252.228-7006	Compliance With Spanish Laws and Insurance	DEC 1998
252.242-7000	Postaward Conference	DEC 1991
252.243-7002	Requests for Equitable Adjustment	MAR 1998
252.246-7000	Material Inspection And Receiving Report	DEC 1991
252.247-7023	Transportation of Supplies by Sea	MAY 2002
252.247-7023 Alt III	Transportation of Supplies by Sea (May 2002) Alternate III	MAY 2002

CLAUSES INCORPORATED BY FULL TEXT

52.211-11 LIQUIDATED DAMAGES--SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (SEP 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Government liquidated damages of \$1000 per calendar day of delay.

(b) If the Government terminates this contract in whole or in part under the Default--Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default--Fixed-Price Supply and Service clause in this contract.

(End of clause)

52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (FEB 2002)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have

been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement or any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice. (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer--Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212-5(b) for the appropriate EFT clause. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by

law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(End of clause)

ADDENDUM TO FAR 52.212-4 CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS

Contract Clause FAR 52.212-4, Contract Terms and Conditions – Commercial Items, incorporated in full text, is hereby tailored to reflect the following changes to Paragraph (c), Changes, in accordance with FAR 12.302(a):

“c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties except for items/provisions delineated in the contract as within the authority of the Contracting Officer. Where the Government requests a change requiring written agreement of the parties, the parties agree to undertake best efforts to affect the requested change. Changes in the terms and conditions of a delivery/task/ shipping order issued under the contract may be made in writing on a unilateral basis by the Government.

1) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer must make an equitable adjustment in the contract price, the delivery schedule or both, and shall modify the contract.

2) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order.

3) If the Contractor’s proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

- 4) Failure to agree to any adjustment shall be a dispute.”

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Fixed Price /Indefinite-Delivery Indefinite Quantity (IDIQ) contract with an allowance for the fluctuations in marine fuel prices – Bunker Adjustment Factor (BAF) resulting from this solicitation.

(End of clause)

52.216-19 ORDER LIMITATIONS. (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than 1 FEU or 1 MsT (insert dollar figure or quantity), the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of the capacity of the vessel;

(2) Any order for a combination of items in excess of the capacity of the vessel; or

(3) A series of orders from the same ordering office within 3 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within one (1) day after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-22 INDEFINITE QUANTITY. (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum". The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum".

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after [insert date].

(End of clause)

52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days.

(End of clause)

52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within 60 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 66 months.

(End of clause)

52.219-6 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUL 1996)

(a) Definition.

"Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) General. (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) Agreement. A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from Military Traffic Management Command, 200 Stovall Street, Room 12S45, ATTN: William Mills, Alexandria, Virginia 22332-5000.

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

FAR Site: <http://farsite.hill.af.mil>

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

FAR Site: <http://farsite.hill.af.mil>

